

# **Exhibit 6**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

- - - - - x  
CHASOM BROWN; MARIA NGUYEN; WILLIAM  
BYATT; JEREMY DAVIS; and CHRISTOPHER  
CASTILLO, individually and on behalf  
of all other similarly situated,

Plaintiffs,  
No. 5:20-cv-03664-LHK  
-against-

GOOGLE LLC,

Defendant.

- - - - - x

Zoom video conference deposition of  
RORY McCLELLAND, taken pursuant to  
notice, was held remotely, commencing  
February 18, 2022, 5:30 a.m. Eastern  
Standard Time, before Leslie Fagin, a  
Stenographic Court Reporter and Notary  
Public in the State of New York.

- - -

MAGNA LEGAL SERVICES  
320 West 37th Street, 12th Floor  
New York, New York 10018  
(866) 624-6221

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1 A P P E A R A N C E S:  
 2 (All Parties Present Via Zoom.)  
 3  
 4  
 5 BOIES SCHILLER & FLEXNER LLP  
 6 Attorneys for Plaintiffs  
 7 44 Montgomery Street, 41st Floor  
 8 San Francisco, California 94104  
 9 BY: MARK MAO, ESQUIRE  
 10 ROSANNA BAEZA, ESQUIRE  
 11  
 12 QUINN EMANUEL URQUHART & SULLIVAN  
 13 Attorneys for Defendant  
 14 51 Madison Avenue, 22nd Floor  
 15 New York, New York 10010  
 16 BY: JOMAIRE A. CRAWFORD, ESQUIRE  
 17 CARL SPILLY, ESQUIRE  
 18  
 19 BAILEY GLASSER  
 20 Attorneys for Witness  
 21 209 Capitol Street  
 22 Charleston, West Virginia 25301  
 23 BY: BENJAMIN L. BAILEY, ESQUIRE  
 24 ELLIOTT McGRAW, ESQUIRE  
 25  
 ALSO PRESENT:  
 18  
 19 LESLEY WEAVER, ESQUIRE  
 20 BLEICHMAR FONTI  
 21 For the Calhoun Plaintiffs  
 22  
 23 VANESSA WHEELER, Exhibit Tech  
 24 Magna Legal Services  
 25

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1 R. McClelland  
 2 R O R Y M C C L E L L A N D, called as a  
 3 witness, having been duly sworn by a  
 4 Notary Public, was examined and testified  
 5 as follows:  
 6 MS. BAEZA: Good morning this is  
 7 Rosanna Baeza on behalf of plaintiffs  
 8 and with me is Mark Mao, also from Boies  
 9 Schiller Flexner.  
 10 MS. WEAVER: Good morning. Lesley  
 11 Weaver, Bleichmar Fonti on behalf of the  
 12 Calhoun plaintiffs.  
 13 MS. CRAWFORD: Jomaire Crawford  
 14 from Quinn Emanuel Urquhart for the  
 15 defendant, Google LLC. I am joined this  
 16 morning by my colleague, Carl Spilly.  
 17 MR. BAILEY: I'm Ben Baily with  
 18 Bailey Glasser and my colleague, Elliott  
 19 McGraw is on. We represent the witness.  
 20 Even if one steps out, there will  
 21 always be one of us here.  
 22 EXAMINATION BY  
 23 MS. BAEZA:  
 24 Q. Good morning. My name is Rosanna  
 25 Baeza and I represent the plaintiffs in this

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1 R. McClelland  
 2 case.  
 3 Can you state your full name for  
 4 the record?  
 5 A. My full name is Rory James  
 6 McClelland.  
 7 Q. Before we begin, where are you  
 8 located presently?  
 9 A. I'm in London, United Kingdom.  
 10 Q. Where exactly in London?  
 11 A. In the Boies Schiller office. The  
 12 address is No. 5 New Street Square.  
 13 Q. Is there anybody in the room with  
 14 you today?  
 15 A. No, there is not.  
 16 Q. Mr. McClelland, have you ever  
 17 testified under oath before?  
 18 A. No, I haven't.  
 19 Q. Do you understand that you are  
 20 under the same oath today as if you were in a  
 21 courtroom?  
 22 A. I do.  
 23 Q. I'm going to assume that you  
 24 understand the questions that I ask you,  
 25 unless you tell me that you don't understand

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1 R. McClelland  
 2 them, is that fair?  
 3 A. I understand, yes.  
 4 Q. Is there anything that would  
 5 prevent you from testifying truthfully today?  
 6 A. No, there is nothing.  
 7 Q. If at any time you need to take a  
 8 break during the deposition, will you let me  
 9 know?  
 10 A. I will.  
 11 Q. Do you have an undergraduate  
 12 degree?  
 13 A. I do, yes.  
 14 Q. What did you study?  
 15 A. Electronic and computer  
 16 engineering.  
 17 Q. Where did you earn your  
 18 undergraduate degree?  
 19 A. At the University of Birmingham.  
 20 Q. When did you graduate from the  
 21 University of Birmingham?  
 22 A. September 2001.  
 23 Q. Do you have a graduate degree?  
 24 A. I do. I have a master's in  
 25 computer science from the same university.

2 (Pages 2 to 5)

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1 R. McClelland  
 2 travel to another location in order to give  
 3 testimony in connection with this matter or  
 4 was it presented as something that you were  
 5 doing voluntarily or at your own election?

6 A. The whole thing was at my election  
 7 and voluntarily, but if I did want to do it,  
 8 the interpretation I took away was that I had  
 9 to do it outside of Germany.

10 Q. During the course of that  
 11 conversation, were you made aware that you,  
 12 as a German resident, were not obligated or  
 13 were not under the subpoena power of the  
 14 United States Courts, did that come up in  
 15 your conversation at all?

16 A. I don't believe it did.

17 Q. But, nonetheless, it appears that  
 18 you were asked to give testimony and you  
 19 agreed to fly to London for that?

20 A. That is right, yeah.

21 Q. Did you have any other  
 22 conversations with either plaintiffs' counsel  
 23 at Boies Schiller or any of the other  
 24 plaintiffs that are present -- did you have  
 25 any other conversations, I don't know the one

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1 R. McClelland  
 2 you just mentioned, with Mr. Richardson?  
 3 MS. BAEZA: Objection, form, vague.

4 A. There was an email thread, if I  
 5 remember correctly, around the logistics part  
 6 of it, but, basically, the conversation moved  
 7 at that stage.

8 Q. Was the email conversation, the one  
 9 you just mentioned -- actually, do you recall  
 10 the timing of that email exchange and whether  
 11 it was in the latter portion of 2021 or  
 12 whether it was in early 2022?

13 A. May I check?

14 MS. BAEZA: Objection, form,  
 15 mischaracterizes testimony.

16 Q. Yes, please.

17 A. It was early 2022, if I remember  
 18 correctly.

19 Q. If you needed to check, obviously,  
 20 feel free to ensure the accuracy of your  
 21 testimony.

22 A. I'm checking now.

23 So I have the email deleted here.  
 24 I first reached out on the 27th of December,  
 25 the very end of the year, so, apologies, that

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1 R. McClelland  
 2 was somewhat incorrect, and the conversation  
 3 continued into early January and we moved on  
 4 to the logistics part of that around the 7th  
 5 of January.

6 Q. That's helpful. Thank you.

7 Outside of the communications or  
 8 conversations that you have told me about so  
 9 far, any other communications with  
 10 plaintiffs' counsel that come to mind?

11 A. No, no others.

12 Q. Did plaintiffs' counsel indicate  
 13 that they were going to be referring you to  
 14 an attorney who would be representing you in  
 15 connection with your deposition?

16 A. I'm not sure referring was the  
 17 right word. They recommended one and I was  
 18 happy to take their recommendation.

19 Q. Understood.

20 Again, not looking to delve into  
 21 privileged conversations that you might have  
 22 had with Mr. Bailey, but I'm going to ask at  
 23 a high level, do you understand Mr. Bailey to  
 24 be charging you in connection with his  
 25 representation of you at today's deposition?

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1 R. McClelland  
 2 A. No, the costs are being covered by  
 3 the plaintiffs.

4 Q. Was that something promised to you  
 5 or suggested to you in any way in connection  
 6 with the communications that you had with  
 7 plaintiffs' counsel?

8 A. It was made clear from the  
 9 beginning that they would cover those costs.

10 Q. Any other costs that either they  
 11 offered to cover or that you understood would  
 12 be covered in connection with your testimony  
 13 today?

14 A. Yes, they offered to cover the  
 15 travel costs for being here in London.

16 Q. Is it safe to assume those costs,  
 17 since you are currently residing in Berlin,  
 18 includes a flight and perhaps overnight  
 19 accommodations?

20 A. That's right, flight, hotel, Covid  
 21 tests, the usual things nowadays, like a  
 22 business trip.

23 Q. Understood. I haven't traveled in  
 24 a bit, but that's an important context.

25 Any other expenses that you think

<p>Page 274</p> <p>1 R. McClelland 2 unreliable, would you have any basis to 3 dispute his conclusion? 4 A. I'm not really sufficiently 5 technical to have a strong view there, 6 however, it was known that this was 7 notoriously difficult to do and finicky and, 8 suddenly took a lot of time before we got a 9 model that we had confidence in. 10 Q. Can you explain for us why that is, 11 why it was tricky or finicky? 12 A. Well, there are different ways of 13 measuring Incognito usage. Simple sessions, 14 number of pages, an understanding of what is 15 important, different pages have different 16 number of ad impressions on them, some pages 17 have none at all, some have three or four ads 18 and that's not represented in the simple page 19 load in Incognito metric, so where you are 20 trying to find a model that was the best 21 proxy to revenue impact was quite hard. 22 Beyond that, the technical reasons, too 23 technical for me, I'm afraid. 24 Q. That's okay. 25 Now, I would like to ask a couple</p>	<p>Page 275</p> <p>1 R. McClelland 2 of questions about joinability and the logs 3 that you were asked about and you testified 4 about. 5 Do you remember counsel asking you 6 questions regarding segmentation of regular 7 browsing mode profiles and Incognito mode 8 profiles? 9 A. Yes, I do. 10 Q. If we can, let's introduce tab 6, 11 which is a document that was produced by 12 Google during discovery. It bears the Bates 13 No. GOOG-CABR-00892455. It should be up in 14 front of you as T-06. 15 A. I'm looking at it now. 16 Q. Appreciate that if you could take a 17 look at it and just let me know whenever you 18 are done? 19 (Exhibit 23, documents beginning 20 with Bates stamp No. GOOG-CABR-00892455, 21 marked for identification.) 22 THE EXHIBIT TECH: Just let me know 23 when you need me to turn the page. 24 THE WITNESS: I'm looking at the 25 actual document, so I'm fine.</p>
<p>Page 276</p> <p>1 R. McClelland 2 A. I have read the document. Thank 3 you. 4 Q. Are you familiar with this document 5 or the general policy that this document 6 describes? 7 A. Yes, I am. 8 Q. Can you tell us what this is? 9 A. It defines how data should be 10 treated by Google employees, and particularly 11 how certain types of data should be handled 12 with more care and certain things that must 13 never happen. It's a data usage policy 14 document. 15 Q. Did you consult this policy in 16 connection with your work for Google? 17 A. Certainly. This document was used 18 regularly. 19 Q. How did you -- how was this 20 document used regularly? 21 A. Both in terms of how we would use 22 data in our own features, but would also be 23 referenced when we were quality auditing 24 other feature teams features, perhaps 25 pointing to something in this just to draw</p>	<p>Page 277</p> <p>1 R. McClelland 2 their attention to it. 3 Q. If you could please scroll to the 4 page that ends in 455 and I'm looking 5 specifically at the Go/Loss-Usage header. 6 Do you see where that appears? 7 A. Page 455? 8 Q. That's right. First page -- it's 9 at the very top of the page. 10 A. I see. Yes, I skipped over it. 11 Q. If we could call that up on the 12 screen. 13 Do you mind rereading this sentence 14 and letting me know when you are done? 15 A. I have read it. 16 Q. Based on your understanding of this 17 portion of the document, do you understand 18 that Google prohibits reidentifying any 19 individuals using anonymous or synonymous 20 data? 21 A. I do, but that doesn't seem to 22 apply to the particular bit of tech shown, 23 but, yes, I do. 24 Q. If we get to a portion of the 25 document where there is support for that</p>

<p>Page 278</p> <p>1 R. McClelland 2 understanding, can you just call it out and 3 let me know? 4 A. Sure. 5 Q. Google prohibits, based on your 6 understanding of this policy, correlating 7 authenticated and non-authenticated 8 information, is that right? 9 A. That is right, yes. 10 Q. Can you explain why that is? 11 A. An example would be in Incognito 12 mode, again, a user who signed in in regular 13 mode, one use of Incognito may be to 14 temporarily present as a non-signed-in user 15 and, therefore, it's important, from the 16 user's point of view, they have chosen to do 17 that to segment their browsing activity and, 18 therefore, it is important that Google does 19 not attempt to rejoin that data. 20 Q. Are you aware of Google rejoining 21 that data? 22 A. No, as far as I am aware, Google 23 never did that. 24 Q. Why is that? 25 A. Because it would be a breach of</p>	<p>1 R. McClelland 2 user trust, potential PR incident. 3 Q. Google also prohibits 4 fingerprinting users for the purpose of 5 associating their activity over time or 6 across contexts, is that right? 7 MS. BAEZA: Objection to form, lack 8 of foundation, compound. 9 A. Yes, that is my understanding, that 10 fingerprinting was also not allowed to be 11 used. 12 Q. Is your understanding of why it was 13 not allowed to be used any different than the 14 explanation you just provided for why Google 15 doesn't correlate authenticated and 16 non-authenticated data? 17 A. Exactly, same reasons, user trust 18 perception, PR. 19 Q. In the context of Incognito mode 20 for Chrome specifically, is it also true that 21 Google prohibits joining authenticated 22 information with non-authenticated data? 23 A. Exactly, the policy still applies 24 for Incognito mode. 25 Q. If a user opens an Incognito window</p>
<p>Page 280</p> <p>1 R. McClelland 2 and does not log into a Google account, the 3 information from their Incognito browsing 4 session would be considered unauthenticated, 5 is that right? 6 A. Not necessarily a user. There is 7 nothing to prevent a user from signing into 8 to a regular account within Incognito mode, 9 upon which they would then be authenticated, 10 but, by default, when you first launch an 11 Incognito window, you would be signed out of 12 all Google services and, therefore, 13 unauthenticated. 14 Q. If the user in that Incognito 15 session does not log in at all to any Google 16 account, is the information from that 17 browsing session unauthenticated? 18 A. That is right, it's 19 unauthenticated. 20 Q. And Google team members, would you 21 agree, are tasked with preventing the joining 22 of data from non-Incognito browsing instances 23 with Incognito browsing instances? 24 A. Tasked with preventing, my 25 understanding more that it was prohibited, it</p>	<p>Page 281</p> <p>1 R. McClelland 2 wasn't allowed. Whether there were efforts 3 to actually make that harder, I don't know or 4 not, but my understanding of the policy was 5 that as employees, we must never do that, 6 must never endeavor to do that. 7 Q. Are you aware of any instance where 8 you endeavored to do that or anyone who 9 reported to you? 10 A. No. 11 MS. BAEZA: Objection to form, 12 compound, asked and answered. 13 A. No, I am not aware of any incident 14 where that was tried. 15 Q. Were you, in connection with your 16 work as Chrome browser privacy manager, 17 responsible for enforcing this policy? 18 A. No, that was outside of my 19 responsibilities. There were teams who were 20 more responsible for it, but everyone had a 21 responsibility to adhere to the policy. 22 Q. Would you say you did that in 23 connection with your employment at Google? 24 A. Yes, that's right. 25 Q. I would now like to introduce tab</p>

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